

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

RICKY SLACK,)	
)	
Plaintiff)	
)	
v.)	Case No. 2:03 cv 301
)	
THE COUNTY OF PORTER, c/o GWEN)	
RINKENBERGER; DAVID REYNOLDS,)	
in his capacity as Porter)	
County Sheriff; and JOE WIDUP,)	
Porter County Warden,)	
)	
Defendants)	
*****)	
DANNY RAY SLOWNIKOWSKI,)	
)	
Plaintiff)	
)	
v.)	Case No. 2:03 cv 303
)	
THE COUNTY OF PORTER, c/o GWEN)	
RINKENBERGER; DAVID REYNOLDS,)	
in his capacity as Porter)	
County Sheriff; and JOE WIDUP,)	
Porter County Warden)	
)	
Defendants)	

OPINION AND ORDER

This matter is before the court on the Motion to Consolidate Actions filed by the plaintiff, Ricky Slack, in Cause No. 2:03 cv 301, on October 19, 2005, and the Motion to Consolidate Actions filed by the plaintiff, Danny Ray Slownikowski, in Cause No. 2:03 cv 303, on October 19, 2005. For the reasons set forth below, both motions are **GRANTED**.

Background

On October 11, 2005 and November 1, 2005, the plaintiffs in these separate causes of action filed identical Second Amended Complaints alleging that they suffered staph infections and

spider bites while incarcerated at the Porter County Jail. The court previously ordered the cases consolidated for the purpose of discovery. Now, the plaintiffs request that their cases be consolidated for trial as well.

Discussion

Federal Rule of Civil Procedure 42(a) permits the court to consolidate several actions for trial when the actions involve "a common question of law or fact." This test is distinct from that set forth by Federal Rule of Civil Procedure 20(a) which permits joinder of plaintiffs in a single action if there exists both (1) a common question of law or fact and (2) the plaintiffs assert a right to relief arising from the "same transaction, occurrence, or series of transactions and occurrences." See Wright & Miller, 9 *Federal Practice and Procedure* 2d §2382, p. 432 (1994). By contrast, under Rule 42, "the common question by itself is enough to permit consolidation, even if the claims arise out of independent transactions." 9 *Fed. Prac. and Proc.* 2d §2382, pp. 432-33. The trial court enjoy broad discretion to consolidate cases under Rule 42. See ***United States v. Knauer***, 149 F.2d 519, 520 (7th Cir. 1945).

Consolidation is appropriate in these cases. Both plaintiffs allege the same injuries from the same causes, and both claim that the defendants "acted with deliberate and callous indifference" towards the plaintiffs' injuries in violation of the Eighth Amendment. (Slack Second Am. Comp., ¶5; Slownikowski Second Am Comp. ¶5) The defendants' attempt to distinguish the

cases on the basis of the body parts injured and timing (several weeks apart) of the plaintiffs' injuries misapplies the Rule 20 joinder requirements to Rule 42. Here, the cases share numerous questions of fact and law, including the presence of spiders at the jail, the defendants' remediation thereof, and the defendants' liability for injuries caused by the spider bites. The court's need to conduct an individualized inquiry into the treatment for each plaintiff's injuries does not vitiate the commonality of these other issues.

For the foregoing reasons, the Motion to Consolidate Actions filed by the plaintiff, Ricky Slack, in Cause No. 2:03 cv 301, on October 19, 2005 is **GRANTED**, and the Motion to Consolidate Actions filed by the plaintiff, Danny Ray Slownikowski, in Cause No. 2:03 cv 303, on October 19, 2005 is **GRANTED**.

These cases are consolidated into Cause No. 2:03 cv 301 for dispositive motions and trial. The court herein **ORDERS** that the deadlines established in 2:03 cv 301 on October 21, 2005 also apply in 2:03 cv 303.

ENTERED this 20th day of December, 2005

s/ ANDREW P. RODOVICH
United States Magistrate Judge